

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW HAMPSHIRE

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Ian B. Freeman, et al.  
Plaintiffs

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v.

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**Case No. 1:20-cv-00963-LM**

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City of Keene, et al.  
Defendants

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**MOTION TO DISMISS BY CITY OF KEENE**

NOW COMES Defendant City of Keene (“City”), by its counsel, Gallagher, Callahan, & Gartrell P.C., and moves to dismiss all counts in Plaintiffs’ Complaint dated September 18, 2020<sup>1</sup>:

1. Plaintiffs’ Complaint includes five counts: 1) Count I—declaratory judgment; 2) Count II—federal and state constitutional violations of Plaintiffs’ free exercise of religion; 3) Count III—federal and state constitutional violations of Plaintiffs’ freedom of speech; 4) Count IV—federal constitutional violations of Plaintiffs’ procedural due process; 5) Count V— federal constitutional violations of Plaintiffs’ right of assembly.

2. City is entitled to dismissal on all counts pursuant to *Fed. R. Civ. P.* 12(b)(6) as a matter of law for the reasons stated in its Memorandum of Law.

WHEREFORE, City requests the following affirmative relief:

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<sup>1</sup> Plaintiffs’ Complaint stated Plaintiffs were “filing contemporaneously with this Complaint a Motion for a Temporary Restraining Order and/or Preliminary Injunction.” (Compl. [Doc. 1] at \*1 n. 1.) City has not been served with a Temporary Restraining Order and/or Preliminary Injunction, so neither document is addressed in this motion or supporting memorandum of law.

- A. Grant this Motion to Dismiss;
- B. Award attorneys' fees and costs pursuant to 42 U.S.C. § 1988<sup>2</sup>;
- C. Order such other relief as is just and proper.

Respectfully submitted,

CITY OF KEENE  
By Its Attorneys  
GALLAGHER, CALLAHAN & GARTRELL, P.C.

Dated: January 22, 2021

By: /s/ Charles P. Bauer

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#### **LOCAL RULE 7.1**

I, Charles P. Bauer, hereby certify that I did not attempt to gain concurrence because this is a dispositive motion.

Dated: January 22, 2021

By: /s/ Charles P. Bauer

Charles P. Bauer, Esq. (NH Bar #208)

#### **CERTIFICATE OF SERVICE**

I, Charles P. Bauer, hereby certify that I have this date forwarded a copy of the foregoing to all counsel of record through the court's electronic filing system (ECF).

Dated: January 22, 2021

By: /s/ Charles P. Bauer

Charles P. Bauer, Esq. (NH Bar #208)

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<sup>2</sup> "Attorney's fees. In any action or proceeding to enforce a provision of sections . . . 1980, and 1981 of the Revised Statutes [42 U.S.C. §§ 1981–1983, 1985, 1986], . . . *the court, in its discretion, may allow* the prevailing party, other than the United States, a reasonable attorney's fee as part of the costs . . . ." 42 U.S.C. § 1988 (emphasis added).